



## **LIBRARY OF CONGRESS**

### **U.S. Copyright Office**

#### **37 CFR Parts 201 and 202**

**[Docket No. 2017-16]**

#### **Group Registration of Newspapers**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Copyright Office is amending its regulation governing the group registration option for newspapers. The final rule will make a number of changes to reflect current Office practices, improve the efficiency of the registration process, and encourage broader participation in the registration system by reducing the burden on applicants. Specifically, the final rule revises the definition of “newspaper issues” and clarifies that the group registration option may be used to register any qualifying “newspaper issue.” The final rule will also require applicants to file an online application rather than a paper application, and upload a complete digital copy of each issue through the Office’s electronic registration system instead of submitting them in physical form. Digital copies of newspapers received by the Office under this group registration option will be offered to the Library of Congress for use in its collections, and the Library intends to provide public access to these digital files, subject to the restrictions set forth in the final rule. Applicants may continue to submit their issues on microfilm on a voluntary basis (in addition to and at the same time as submitting digital files) if the microfilm is received by December 31, 2019. After that date, the microfilm option will be eliminated. The final rule clarifies that each issue in the group must be a new collective work and a

work made for hire, that the author and copyright claimant for each issue must be the same person or organization, and that the claim must be received within three months after the publication of the earliest issue in the group. Finally, the rule confirms that a group registration covers each issue in the group, as well as any contributions appearing within each issue if they are fully owned by the copyright claimant and if they were first published in those issues.

**DATES:** Effective March 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or by email at rkas@loc.gov and ebertain@loc.gov; or Anna Bonny Chauvet, Assistant General Counsel, by telephone at 202–707–8350, or by email at achau@loc.gov.

**SUPPLEMENTARY INFORMATION:** When Congress enacted the Copyright Act of 1976 (the “Act”), it authorized the Register of Copyrights (the “Register”) to specify by regulation the administrative classes of works for the purpose of seeking a registration, and the nature of the deposits required for each such class. In addition, Congress granted the Register the discretion to allow groups of related works to be registered with one application and one filing fee. *See* 17 U.S.C. 408(c)(1). Congress cited “the various editions or issues of a daily newspaper” as a specific example of a “group of related works” that would be suitable for a group registration. H.R. REP. NO. 94-1476, at 154 (1976), *reprinted in* 1976 U.S.C.C.A.N. 5659, 5770; S. REP. NO. 94-473, at 136 (1975).

On November 6, 2017, the Copyright Office (the “Office”) published a notice of proposed rulemaking (“NPRM”) setting forth proposed amendments to the current

regulation governing the group registration option for newspapers. 82 FR 51369 (Nov. 6, 2017). The NPRM proposed modifying the requirements for this group registration option in several respects. First, the proposed rule would make any newspaper, as defined in the regulation, eligible for a group registration, regardless of whether the Library of Congress (the “Library”) has selected that newspaper for its collections. Second, it would require applicants to register their newspapers through the Office’s electronic registration system in lieu of using paper applications. Third, it would amend the deposit requirements by requiring applicants to upload their newspapers in digital form through the Office’s electronic registration system. Applicants would no longer be required to submit microfilm containing a complete copy of each issue (although they could submit microfilm on a voluntary basis, in addition to uploading digital copies) if the microfilm is received by December 31, 2019, after which the microfilm option would be eliminated. Fourth, applicants would be required to submit their claim within three months after the date of publication for the earliest issue in the group, rather than the most recent issue. Fifth, the proposed rule confirmed that deposits submitted for the purpose of group registration would satisfy the mandatory deposit requirement under section 407. Sixth, it confirmed that the Library may provide limited access to any digital newspaper deposits that it receives from the Office under the group registration option, subject to certain restrictions. Seventh, the proposed rule codified the Office’s longstanding position regarding the scope of a registration for a group of newspaper issues, namely, that a group registration covers each issue in the group, as well as the articles, photographs, illustrations, or other contributions appearing within each issue—if they are fully owned by the copyright claimant and if they were first published in those issues. Finally, the

proposed rule would implement some technical amendments to address certain inconsistencies in the current regulation.

In response to the NPRM, the Office received comments from the News Media Alliance (“NMA”),<sup>1</sup> the Copyright Alliance, and three individuals.<sup>2</sup> The NMA “strongly supports the Copyright Office’s proposal to broaden the eligibility and formatting requirements for group registration of newspapers and to permit the submission of deposits in digital form rather than on microfilm.” NMA Comment at 3. The Copyright Alliance endorsed NMA’s comments and “joins in applauding the Copyright Office for its proposal permitting broader group registration for newspapers and accepting deposits in PDF format rather than microfilm.” Copyright Alliance Comment at 1. Of the individuals submitting comments, one expressed support for the proposed rule, one provided non-substantive comments, and one expressed concern about charging a filing fee.<sup>3</sup>

Having reviewed and carefully considered the comments, the Office now issues a

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<sup>1</sup> The NMA is a nonprofit organization that represents the interests of more than 2,000 newspapers in the United States and around the world.

<sup>2</sup> All of the comments submitted in response to the NPRM can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/group-newspapers/>.

<sup>3</sup> The Office notes that the Copyright Act provides that “[f]ees *shall* be paid to the Register of Copyrights” when “filing each application . . . for registration of a copyright claims.” 17 U.S.C. 708(a), (a)(1) (emphasis added). The same individual also stated that the regulatory definition of “newspaper” should be amended to include “electronic” publications, because they “have an important presence in our society.” M. Ibarra Comment at 2. As noted in the NPRM, the final rule may be used to register a newspaper that is distributed in an electronic format, such as a PDF version of a physical publication. To do so, the publisher would have to demonstrate that each issue contains a fixed selection of content, each issue is distributed as a collective work, and the content of each issue does not change once it has been distributed to the public. 82 FR at 51373. To the extent the commenter is referring to newspaper websites, the Office reiterates that a website would not be considered a “newspaper” for purposes of this group registration option, for the reasons stated in the NPRM. *See id.*

final rule that is almost substantively identical to the proposed rule.<sup>4</sup> The NPRM stated that the Office will allow applicants to submit microfilm copies in addition to uploading digital copies (if the microfilm is received by December 31, 2019) in case publishers need time to develop quality assurance testing to ensure complete digital submissions. For avoidance of doubt, the final rule clarifies that microfilm copies may be used to cure deficiencies in the digital files at the Register's discretion. The final rule also clarifies that the microfilm copies must be submitted at the same time as the application, but the effective date of registration for this group option will be the date on which the Office receives an acceptable application, the digital files, and the proper filing fee.

The NMA asked the Office to clarify when the final rule will go into effect. As stated above, the final rule takes effect on March 1, 2018. Under the final rule, applicants will be required to submit their claims within three months after the date of publication for the earliest issue in the group. Thus, the final rule may be used to register newspaper issues published on or after December 1, 2017, provided that the claim is received in a timely manner.<sup>5</sup> Because applicants will be required to include a full month of issues in each claim, and because they will be required to submit their claims within three months after the publication of the earliest issue in the group (rather than the most recent issue), it makes sense for the final rule to go into effect on the first day of March 2018.

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<sup>4</sup> A few technical changes have been made to account for recent amendments resulting from other rulemakings. *See, e.g.*, 82 FR 29410 (Nov. 13, 2017).

<sup>5</sup> Issues published in October 2017 and November 2017 may be registered under the regulation currently set forth in § 202.3(b)(7), provided that the claim is received within three months after the date of publication for the most recent issue in the group. Issues published before October 1, 2017 are no longer eligible for the group registration option, and thus, would have to be registered on an individual basis. *See* 37 CFR 202.3(b)(7)(i)(F).

The NMA also asked the Office to provide more information on what publishers will be expected to do when the final rule goes into effect. The Office is developing several new resources in response to this request. The Office will prepare a video tutorial explaining how to complete the application for the group registration option for newspapers, as well as revise the “help text” within the application itself to reflect the new registration requirements. In addition, the Office will update its various circulars discussing the Office’s practices and procedures for this group registration option, and the Office intends to make similar changes to the sections of the *Compendium of U.S. Copyright Office Practices, Third Edition* that discuss this option.

## **List of Subjects**

### **37 CFR Part 201**

Copyright, General provisions.

### **37 CFR Part 202**

Copyright, Preregistration and registration of claims to copyright.

## **Final Regulations**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR parts 201 and 202 as follows:

### **PART 201—GENERAL PROVISIONS**

1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

2. In § 201.1, add a sentence at the end of paragraph (c)(6) to read as follows:

#### **§ 201.1 Communication with the Copyright Office.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \* Newspaper publishers that submit microfilm under § 202.4(e) of this chapter should mail their submissions to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559.

\* \* \* \* \*

3. In § 201.3, revise paragraph (c)(7) to read as follows:

**§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.**

\* \* \* \* \*

(c) \* \* \*

(7) Registration of a claim in a group of newspapers or a group of newsletters	80
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## **PART 202 - PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

4. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

### **§ 202.3 [Amended]**

5. Amend § 202.3 in (b)(1)(v) by removing “periodicals; newspapers;” and adding in its place “periodicals (including newspapers);” and by removing and reserving paragraph (b)(7).

6. Amend § 202.4 as follows:

a. Revise paragraph (b).

b. Add paragraph (e).

- c. Amend paragraph (g)(4) by removing the second and third sentences.
- d. Revise paragraph (n).

The revisions and addition read as follows:

**§ 202.4 Group registration.**

\* \* \* \* \*

(b) *Definitions.* (1) For purposes of this section, unless otherwise specified, the terms used have the meanings set forth in §§ 202.3, 202.13, and 202.20.

(2) For purposes of this section, the term *Library* means the Library of Congress.

(3) For purposes of this section, a *periodical* is a collective work that is issued or intended to be issued on an established schedule in successive issues that are intended to be continued indefinitely. In most cases, each issue will bear the same title, as well as numerical or chronological designations.

\* \* \* \* \*

(e) *Group registration of newspapers.* Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that a group of newspaper issues may be registered with one application, the required deposit, and the filing fee required by § 201.3(c) of this chapter, if the following conditions are met:

(1) *Issues must be newspapers.* All the issues in the group must be newspapers. For purposes of this section, a newspaper is a periodical (as defined in paragraph (b)(3) of this section) that is mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific



subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

(2) *Requirements for newspaper issues.* Each issue in the group must be an all-new collective work that has not been previously published (except where earlier editions of the same newspaper are included in the deposit together with the final edition), each issue must be fixed and distributed as a discrete, self-contained collective work, and the claim in each issue must be limited to the collective work.

(3) *Author and claimant.* Each issue in the group must be a work made for hire, and the author and claimant for each issue must be the same person or organization.

(4) *Time period covered.* All the issues in the group must be published under the same continuing title, and they must be published within the same calendar month and bear issue dates within that month. The applicant must identify the earliest and latest date that the issues were published.

(5) *Application.* The applicant must complete and submit the online application designated for a group of newspaper issues. The application may be submitted by any of the parties listed in § 202.3(c)(1).

(6) *Deposit.* (i) The applicant must submit one complete copy of the final edition of each issue published in the calendar month designated in the application. Each submission may also include earlier editions of the same newspaper issue, provided that they were published on the same date as the final edition. Each submission may also include local editions of the newspaper issue that were published within the same metropolitan area, but may not include national or regional editions that were distributed outside that metropolitan area.

(ii)(A) The issues must be submitted in a digital form, and each issue must be contained in a separate electronic file. The applicant must use the file-naming convention and submit digital files in accordance with instructions specified on the Copyright Office's website. The files must be submitted in Portable Document Format (PDF), they must be assembled in an orderly form, and they must be uploaded to the electronic registration system as individual electronic files (*i.e.*, not .zip files). The files must be viewable and searchable, contain embedded fonts, and be free from any access restrictions (such as those implemented through Digital Rights Management (DRM)). The file size for each uploaded file must not exceed 500 megabytes, but files may be compressed to comply with this requirement.

(B) Until December 31, 2019, the applicant may also submit the complete issues on positive 35mm silver halide microfilm at the same time as the application, in addition to providing electronic copies of the newspaper issues pursuant to paragraph (e)(6)(ii)(A) of this section. The issues should be arranged on the microfilm in chronological order, and should be sent to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559. Should the applicant submit microfilm copies in addition to electronic files under paragraph (e)(6)(ii)(A) of this section, the effective date of registration for a group registration under paragraph (e) of this section will be the date on which the Office received an acceptable application, the electronic files submitted under paragraph (e)(6)(ii)(A), and the proper filing fee. If the electronic files submitted under paragraph (e)(6)(ii)(A) are deficient and the applicant also submits microfilm copies, the Register shall have discretion in determining whether the microfilm copies may be used to cure deficiencies in the electronic files (*e.g.*, an

electronic file is missing some pages from one newspaper issue, but the microfilm contains a complete version of each issue in the group). In cases where the Register determines that microfilm copies can be used to cure deficiencies in the electronic files submitted under paragraph (e)(6)(ii)(A), the effective date of registration for a group registration under paragraph (e) of this section will be the date on which the Office received an acceptable application, the electronic files submitted under paragraph (e)(6)(ii)(A), and the proper filing fee.

(7) The application, the filing fee, and files specified in paragraph (e)(6)(ii)(A) of this section must be received by the Copyright Office within three months after the date of publication for the earliest issue in the group.

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(n) *The scope of a group registration.* When the Office issues a group registration under paragraph (e) of this section, the registration covers each issue in the group and each issue is registered as a separate collective work. When the Office issues a group registration under paragraph (g), (h), (i), or (k) of this section, the registration covers each work in the group and each work is registered as a separate work. For purposes of registration, the group as a whole is not considered a compilation, a collective work, or a derivative work under section 101, 103(b), or 504(c)(1) of title 17 of the United States Code.

7. Add § 202.18 to read as follows:

**§ 202.18 Access to electronic works.**

(a) Access to electronic works received under § 202.4(e) will be available only to authorized users at Library of Congress premises in accordance with the policies listed

below. Library staff may access such content off-site as part of their assigned duties via a secure connection.

(b) Access to each individual electronic work received under § 202.4(e) will be limited, at any one time, to two Library of Congress authorized users via a secure server over a secure network that serves Library of Congress premises.

(c) The Library of Congress will not make electronic works received under § 202.4(e) available to the public over the Internet without rightsholders' permissions.

(d) "Authorized user" means Library of Congress staff, contractors, and registered researchers, and Members, staff and officers of the U.S. House of Representatives and the U.S. Senate for the purposes of this section.

(e) "Library of Congress premises" means all Library of Congress premises in Washington, D.C., and the Library of Congress Packard Campus for Audio–Visual Conservation in Culpeper, VA.

8. In § 202.19, revise paragraph (d)(2)(ix) to read as follows:

**§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.**

\* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ix) In the case of published newspapers, a deposit submitted pursuant to and in compliance with the group registration option under § 202.4(e) shall be deemed to satisfy the mandatory deposit obligation under this section.

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Dated: January 10, 2018

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**Karyn Temple Claggett,**  
*Acting Register of Copyrights and*  
*Director of the U.S. Copyright Office*

Approved by:

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**Carla D. Hayden,**  
*Librarian of Congress*

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